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20 al.

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA

23 RICHARD CARRASCO,

24 Case No. C 03-4727 SBA (PR)

25 Plaintiff,

26 **STIPULATION AND [PROPOSED]
PROTECTIVE ORDER REGARDING
CONFIDENTIALITY**

27 v.

28 OFFICER CAMPAGNA, et. al.,

WHEREAS, the parties, **PLAINTIFF RICHARD CARRASCO ("PLAINTIFF")** and **DEFENDANTS OFFICER DAVID CAMPAGNA and OFFICER ALEX HOLGUIN ("DEFENDANTS")**, desire to establish a mechanism to protect the disclosure of information pursuant to Fed. R. Civ. P. 26(c); which a party or third party regards as being of a confidential nature, the public disclosure of which would cause damage to the disclosing party (hereinafter collectively referred to as "Protected Information");

IT IS HEREBY STIPULATED by and between the parties hereto, through their respective

1 counsel, that the following shall govern the disclosure of Protected Information in this action,
 2 subject to the approval of, or as otherwise ordered by, the Court:

3 **1.** Any information recorded in any form or any portion thereof, constituting trade
 4 secrets, personal information, and policies and procedures implicating public safety which, in the
 5 good faith opinion of the party or third party providing such information or discovery or to which
 6 that information belongs (the “producing party”), and which the producing party regards in good
 7 faith as Protected Information may be so designated by the producing party by labeling each such
 8 page of each such document or information as “Confidential” or “Confidential – Attorneys Only”
 9 as detailed in paragraph 2.

10 **2.** As used in this Order, the following terms include:

11 **(a)** The term “**CONFIDENTIAL**” as used in this order is to include only
 12 information that a party reasonably believes and objectively contains confidentially maintained
 13 and protected from disclosure including trade secrets or personal information (financial,
 14 employment, disciplinary and medical information) or other information implicating public safety.

15 **(b)** The term “**CONFIDENTIAL – ATTORNEYS ONLY**” as used in this order is to
 16 include only information which the producing party reasonably believes and objectively contains
 17 highly sensitive security information or other information that could lead to the harm of another if
 18 it becomes known to anyone other than the disclosing party.

19 **(c)** The term “Protected Information” shall include all terms defined in this
 20 paragraph, but shall not include information publicly available.

21 **3.** Any Protected Information shall not be disclosed to anyone except as provided
 22 herein, and shall be used only for the purposes of this litigation.

23 **4.** In lieu of marking as **CONFIDENTIAL** or **CONFIDENTIAL – ATTORNEYS ONLY**, the
 24 original of a document which contains Protected Information prior to inspection, counsel for the
 25 producing party may orally designate such documents being produced for inspection as containing
 26 Protected Information, thereby making them subject to this Order; however, in the event inspecting
 27 counsel requests copies of any such documents, such copies must be marked Confidential or
 28 Confidential – Attorney’s Only by the producing party in order to make such copies subject to this

1 order.

2 **5.** Protected Information designated as **CONFIDENTIAL** shall not be given, shown,
 3 made available or communicated in any way to any person or entity other than the following:

4 **(a)** Counsel for the respective parties;
 5 **(b)** Paralegal assistants, stenographic and clerical employees working under the
 6 direct supervision of counsel identified in Paragraph 5(a) to whom it is necessary to disclose
 7 Protected Information for purposes of this litigation, including outside vendors or independent
 8 contractors retained by counsel to assist in this litigation;

9 **(c)** Plaintiff Richard Carrasco, defendant David Campagna, and defendant Alex
 10 Holguin;

11 **(d)** The Court and Court personnel;

12 **(e)** Any persons involved in recording deposition testimony, including, but not
 13 limited to, stenographers and videographers;

14 **(f)** Any jury empanelled in this action;

15 **(g)** Independent experts or consultants who are not regularly employed by or
 16 associated with a party hereto and whose advice is or will be used by a party hereto in connection
 17 with preparation for trial or trial of this action, as well as any employees, associates or independent
 18 contractors retained by those experts to assist in their work on this matter. Counsel desiring to
 19 disclose Protected Information to such experts or consultants shall first obtain a signed
 20 undertaking, in the form of Exhibit A attached hereto, from each such expert or consultant and
 21 maintain such signed undertaking throughout the course of this litigation.

22 **(h)** Any person that originally authored or received the document, or
 23 demonstrably gained knowledge of the Protected Information by means that are lawful and do not
 24 violate the terms of this Order

25 **(i)** Photocopy or document service personnel provided that such persons return
 26 all originals and copies of materials containing Protected Information and;

27 **(j)** Any other person who is designated as a Qualified Person by order of this

1 Court, after notice to all parties or any such other persons as to whom both parties may agree in
 2 writing.

3 **6.** Protected Information designated as **CONFIDENTIAL – ATTORNEYS ONLY** shall not
 4 be given, shown, made available or communicated in any way to any person described in
 5 paragraph 5(c) above.

6 **7.** In the event that counsel for a party deems it necessary to disclose any Protected
 7 Information to any person not a Qualified Person, said counsel shall notify counsel for the
 8 producing party in writing of the Protected Information to be disclosed, and shall attempt to reach
 9 agreement regarding such disclosure. If agreement cannot be reached, the party seeking to make
 10 the disclosure shall move the Court to rule as to whether such disclosure may be made and whether
 11 any restrictions or limitations should be placed on such disclosure, and the disclosure shall not be
 12 made until that motion is decided and the Court so orders.

13 **8.** Nothing in this order shall prohibit a party's counsel from showing a testifying
 14 witness or an expert Protected Information during the course of a deposition, hearing, or trial.
 15 Prior to being provided access to any Protected Information, all non-party witnesses must execute
 16 the undertaking attached hereto as Exhibit "A" or orally agree to its contents on the record during
 17 deposition, hearing or trial. Should a witness refuse to execute the undertaking or refuse to orally
 18 agree to its contents on the record during a deposition, hearing or trial, the questioning party may
 19 disclose the Protected Information without penalty or breach of this protective order, but
 20 notwithstanding its disclosure the Protected Information will remain governed by the terms of this
 21 protective order.

22 **9.** Nothing in this order shall bar or otherwise restrict any attorney herein from
 23 rendering advice to his or her client with respect to this litigation and in the course thereof,
 24 referring to or relying upon his or her examination of Protected Information; *provided, however,*
 25 that in rendering such advice and in otherwise communicating with his or her clients, the attorney
 26 shall not disclose the content of any Protected Information in violation of the provisions herein.

27 **10.** Third party discovery in this proceeding may involve disclosure of Protected
 28 Information which, if designated in conformity with the provisions of this Order, shall be subject

1 to the provisions herein and provide the non-party with all of the rights and obligations set forth
 2 herein.

3 **11.** In the event that a producing party inadvertently fails to designate Protected
 4 Information or incorrectly so designates information, or in the event that any other person or party
 5 learns of the disclosure of information it deems to be Protected Information, that party or person
 6 may make a late designation or change the designation by so notifying in writing all parties to
 7 whom the Protected Information has been disclosed. The receiving parties shall take reasonable
 8 steps to ensure that the Protected Information is thereafter treated in accordance with the
 9 designation. Reasonably late designation shall not, by itself, be deemed a waiver of the Protected
 10 status of the designated information. No person or party shall incur any liability hereunder with
 11 respect to disclosure that occurred prior to the receipt of written notice of belated designation.

12 **12.** Counsel shall not disclose Protected Information to a witness testifying at a
 13 deposition except in conformity with the provisions of this Order. However, the sole remedy for
 14 disclosure of protected information not in conformity of this order shall be an order requiring that
 15 the information be treated as protected information. No such disclosure shall be made to any
 16 witness unless that witness is entitled by this Order to receive that Protected Information or the
 17 party that produced that Protected Information assents to the disclosure of such Protected
 18 Information in writing or on the record of the deposition. If, during the course of any deposition,
 19 (a) an attorney of record for any party desires to make inquiry into Protected Information subject to
 20 the designation **CONFIDENTIAL** or **CONFIDENTIAL -ATTORNEYS ONLY** or (b) an attorney of
 21 record for a party asserts that an answer to a specific inquiry is subject to the foregoing
 22 designations, the attorney shall make such inquiry only in the presence of those persons authorized
 23 access to such Protected Information. Such testimony shall be sealed, and the parties hereto shall
 24 treat it subject to the provision for disclosure set forth herein.

25 **13.** Testimony or information disclosed at a deposition may be designated by the
 26 producing party as Protected Information by indicating on the record at the deposition the specific
 27 testimony which contains Protected Information that is to be made subject to the provisions of this
 28 Order. All testimony elicited during depositions, hearings, and other proceedings shall be deemed

1 **CONFIDENTIAL or CONFIDENTIAL - ATTORNEYS ONLY** until the expiration of 15 days after
 2 delivery of a copy of the transcript of the testimony by the court reporter to counsel who requested
 3 a copy of the transcript. This paragraph will not otherwise affect the deposition, hearing or other
 4 proceeding that is being recorded while it is in session. Within the 15 day period following
 5 delivery of the transcript, any party may, by written notice served on all parties, designate all or
 6 any portion of the testimony to be **CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS ONLY**. The
 7 right to make such designation shall be waived unless made before the end of the 15 day period.
 8 Upon being informed that certain portions of a transcript are designated as **CONFIDENTIAL or**
 9 **CONFIDENTIAL – ATTORNEYS ONLY**, each party must cause each copy in their custody,
 10 possession or control to be so marked immediately.

11 **14.** Interrogatory answers and answers to requests for admissions designated as
 12 Protected Information shall be delivered to the attorney of record propounding the interrogatories
 13 or requests without being filed with the Court unless required in any further proceedings herein.
 14 When documents so designated and/or other matters of the same or similar nature are the subject
 15 of inquiry at depositions, the portion of the transcript which sets forth or contains Protected
 16 Information, together with such documents, shall be sealed and shall not be filed with the Court
 17 unless required in any further proceedings herein.

18 **15.** No Protected Information will be filed with the Court by the receiving party unless
 19 it is filed under seal. A party seeking to file Protected information with the court shall make every
 20 effort required under the Federal Rules of Civil Procedure and the applicable local rules to file that
 21 information under seal. Protected Information must be filed in sealed containers labeled with: (1)
 22 the title to this action; (2) the general nature of the contents; (3) the words **CONFIDENTIAL or**
 23 **CONFIDENTIAL – ATTORNEYS ONLY**; and (4) a statement substantially in the following form:

24 **CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.** This sealed
 25 container filed in this case, *Richard Carrasco v. Officer Campagna,*
 26 *et. al.*, United States District Court, Northern District of California
 27 Case No. C 03-4727 SBA (PR), contains confidential materials,
 28 which may be used only in connection with the prosecution or
 defense of this lawsuit. Pursuant to Stipulated Protective Order, the
 container shall not be opened nor the contents thereof revealed
 except to the Court. After any such opening or revelation, the
 container shall be resealed with the contents inside.

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2 **16.** The designation by counsel for the disclosing party of any Protected Information is
3 intended solely to facilitate the preparation and trial of this case, and such designation shall not be
4 construed in any way as an admission or agreement by any party that the designated disclosure
5 constitutes or contains any Protected Information in contemplation of law. This Order shall not be
6 construed as a waiver by the parties hereto of any objection which might be raised as to the
7 admissibility of any evidentiary material.

8 **17.** Each party agrees that designation of Protected Information and responses to
9 requests to permit further disclosure of Protected Information shall be made in good faith and not
10 (1) to impose burden or delay on an opposing party, or (2) for tactical or other advantage in
11 litigation.

12 **18.** The protection afforded by this Order shall in no way affect a party's or non-party's
13 right to withhold documents as privileged under the attorney-client or other privilege or as
14 otherwise exempted from discovery under Rule 26.

15 **19.** Within sixty (60) days of the final disposition of this action, whether by judgment
16 (including exhaustion of all appeals), settlement or otherwise, each attorney of record shall
17 promptly deliver to the party or witness from whom obtained either (1) all items which have been
18 marked Protected and all copies made thereof or, at the election of the producing party, (2) an
19 affidavit sworn under penalty of perjury declaring that all such items and all copies thereof have
20 been destroyed. However, the law firm of each attorney of record may retain record copies of any
21 items filed with the Court, as well as correspondence, pleadings and all exhibits thereto, including
22 motions, discovery documents, and deposition transcripts subject to the terms of this Order.

23 **20.** Upon the conclusion of this litigation and either (i) the expiration of the time to file
24 a notice of appeal, if no appeal is filed, or (ii) if an appeal was filed, the filing of the mandate or
25 final order from the Court of Appeals if the case is not reopened is a result of the terms of the
26 mandate or order, all Protected Information held under seal with the Court shall be returned to the
27 party that filed it, provided that if the person to whom it is to be returned fails to remove the
28 Protected Information after notice, it shall be destroyed to the extent allowed under the Local Civil

1 Rules of this Court.

2 **21.** A party shall not be obligated to challenge the propriety of a Protected Information
 3 designation at the time made, and a failure to do so shall not preclude any subsequent challenge. If
 4 a party desires to object to the designation of Protected Information, it shall serve the designating
 5 party a list of the information it deems not properly designated as Protected Information (the
 6 "Contested Information"). The designating party shall then have 15 days to file a motion for
 7 protective order moving the court to have the contested information designated as Protected
 8 Information under the terms of this protective order. Failure to file a motion for protective order
 9 as to any of the "Contested Information" within 15 days shall render that information not Protected
 10 Information.

11 **22.** Nothing herein shall prevent disclosure beyond the term of this Order if the party
 12 designating the Protected Information consents in writing to such disclosure, or if the Court, after
 13 notice to all affected parties, orders such disclosure. If a recipient of Protected Information is
 14 requested to produce such Protected Information by subpoena, the receiving party shall
 15 immediately notify counsel for the producing party by facsimile, and the receiving party shall not
 16 disclose any such Protected Information to a third party without providing the producing party a
 17 reasonable period of time to object to such disclosure prior to disclosing the subpoenaed
 18 information.

19 **23.** In the event anyone shall violate, or threaten to violate, any terms of this Order, the
 20 parties hereto agree that the aggrieved party may immediately apply to obtain injunctive relief
 21 against any such person, and in the event the aggrieved party shall do so, the respondent person,
 22 subject to the provisions of this Order, shall not employ as a defense thereto or claim that the
 23 aggrieved party possesses an adequate remedy at law. Each person to whom disclosure of any
 24 Protected Information is made agrees to subject himself/herself to the jurisdiction of this Court in
 25 which this action is pending for the purpose of proceedings relating to the performance under,
 26 compliance with, or violation of this Protective Order.

27 **24.** This Protective Order shall remain in force and effect indefinitely until modified,
 28 superseded or terminated by Order of this Court, which may be entered pursuant to agreement of

the parties hereto. This Order shall continue in effect after termination of this action and continue to be binding upon all persons to whom Protected Information is disclosed hereunder.

25. The parties may provide by stipulation for exceptions to this Order, and any party may seek an Order of this Court modifying this Protective Order. This Order is without prejudice to the right of either party to seek relief from the Court, upon good cause shown, from any of the restrictions provided herein or to impose additional restrictions on the disclosure of any Protected Information or material produced.

DATED: September 11, 2006

DATED: September 8, 2006

Grant P. Fondo, Esq. (181530)
Cooley Godward LLP
Five Palo Alto Square, 3000 El Camino Real
Palo Alto, CA 94306

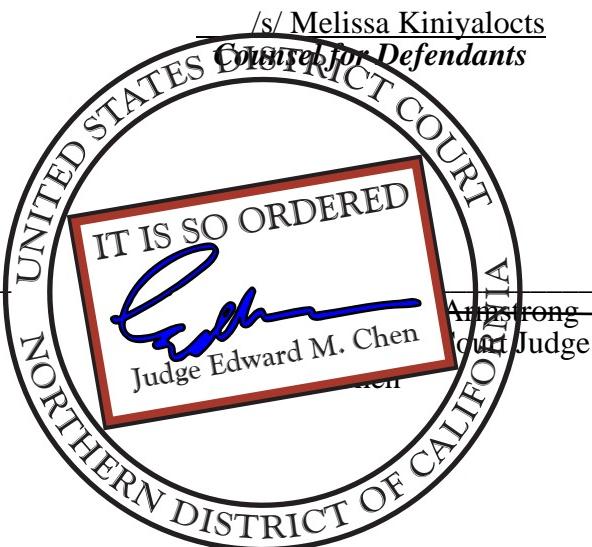
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9th Floor
San Jose, CA 95110-1770

/s/ Grant Fondo
Counsel for Plaintiff

/s/ Melissa Kiniyalots
~~Counsel for Defendants~~

THE FOREGOING STIPULATION IS APPROVED AND IS SO ORDERED.

DATED: 10/4/06



1 EXHIBIT A
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6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
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16 EXHIBIT A
17 CERTIFICATION
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I hereby acknowledge that I have read the Protective Order Regarding Confidentiality entered in the case entitled *Carrasco v. Officer Campagna, et al.* in the District Court for the Northern District of California, Case Number C 03-4727 SBA (pr) (hereinafter "Order"), and I acknowledge and declare that I understand the terms thereof, and that I agree to be bound by the terms thereof. I further agree that I will not at any time use or disclose "Protected information," as that term is defined in the Order, received by me in the course of this lawsuit that is subject to the Order, except for purposes of this lawsuit or as may be required by the Court or counsel for a party to this lawsuit.

Dated: _____
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[Print Full Name]

[Signature]